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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of ) MM Docket No. 94-34  
the Commission's Equal )  
Employment Opportunity Rules )

TO: The Commission

COMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company<sup>1</sup> ("Tribune"), by its attorneys, hereby submits its Comments in response to the Commission's Notice of Inquiry<sup>2</sup> ("NOI") in the above-captioned proceeding. In the NOI, the Commission requested comment on several specific proposals, and, in general, asked for

comment on the effectiveness of the Commission's rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity and promotion opportunity in the cable and broadcast industries; on questions and proposals regarding possible changes in the Commission's EEO rules, policies and enforcement thereof; and how to further, to the greatest extent possible, the goals of the Commission.

NOI at ¶ 1.

Tribune fully supports the Commission's goal of increasing the representation of qualified women and minority group members at all levels of employment in the broadcasting

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<sup>1</sup> Through its wholly owned subsidiaries, Tribune owns and operates the following commercial television stations: KTLA(TV), Los Angeles; WPIX(TV), New York City; WGN-TV, Chicago; KWGN-TV, Denver; WPHL-TV, Philadelphia; WLVI-TV, Boston; WGNX(TV), Atlanta; and WGNO(TV), New Orleans.

<sup>2</sup> FCC 94-103 (released April 21, 1994).

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industry. However, Tribune is concerned that many of the proposals now under consideration, as well as the new requirements adopted in the Commission's February Policy Statement<sup>3</sup>, do not materially advance that goal but, instead, elevate process over results; indeed, by increasing significantly the paperwork burden on broadcasters, they may well diminish the resources that are available for **meaningful** affirmative action efforts.

Accordingly, in keeping with the broad scope of the Commission's inquiry, these Comments first address the basic principles that Tribune believes should guide the Commission's actions in the EEO area. In addition, these Comments briefly address the questions posed by the Commission concerning the degree to which data should continue to be collected with respect to the part-time hires and employees of broadcast stations.

**I. THE COMMISSION SHOULD ACT TO ENCOURAGE THE HIRING OF WOMEN AND MINORITY GROUP MEMBERS BY BROADCAST STATIONS.**

In considering further changes in its EEO regulations, the Commission should keep in mind the ultimate purpose of those regulations: to increase diversity in programming and to ensure that broadcasters serve all segments of the community. See, e.g., Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990);

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<sup>3</sup> In the Matter of Standards for Assessing Forfeitures for Violations of the Broadcast EEO Rules (Policy Statement), 9 FCC Rcd. 929 (1994).

Trinity Broadcasting of Florida, Inc., 8 FCC Rcd. 2475, 2477 (1993). In order to achieve this goal, the Commission's EEO regulations must be specifically designed to encourage broadcaster hiring of qualified women and minority group members -- only those who are in fact hired by broadcasters will be in a position to influence or participate in the choice of programming. Compare Trinity Broadcasting of Florida, Inc., supra, 8 FCC Rcd. at 2477 ("race based differentiation in the ownership of broadcast stations would not be acceptable if it were not designed to promote goals relating to diversity of programming which we have previously enumerated.")

The new policies articulated by the Commission in its February Policy Statement, as well as many of the proposals under consideration in this proceeding, lack that critical and necessary connection with the actual hiring decisions of broadcasters and reflect, instead, an inappropriate focus on process versus results.

For example, Tribune is concerned that the numerical standards adopted by the Commission in its Policy Statement to evaluate the adequacy of a station's EEO recruiting efforts may result in the imposition of penalties on a station which has in fact met or exceeded the Commission's hiring guidelines. It is apparent from some of the Commission's decisions implementing the new guidelines that this concern is not unwarranted. See, e.g., San Luis Obispo Limited Partnership, 9 FCC Rcd. 894, 899-900

(1994) (\$25,000 forfeiture, short-term renewal, and reporting conditions imposed on station notwithstanding the fact that it had hired minorities at a rate equal to 100% of minority representation in its county).

In focusing more on the bottom line goal of increased representation of women and minorities in station workforces, the Commission should act to encourage station flexibility and innovation, rather than binding stations to the Commission's view of how hiring should take place. Thus, the Commission should reconsider its use of applicant pools, as it previously has been urged to do by the National Association of Broadcasters and others. Moreover, the Commission should avoid the imposition of punitive sanctions on stations based on an "efforts only" analysis, and particularly the retroactive imposition of such sanctions, for EEO efforts that the FCC regards as inadequate. Rather, the Commission should afford stations broad discretion in their recruiting efforts and should act to foster and encourage those efforts -- especially when they are successful in generating actual minority and female hires.

**II. THE COMMISSION SHOULD TERMINATE THE COLLECTION OF DATA CONCERNING PART-TIME HIRES AND EMPLOYEES.**

In the NOI, the Commission asked whether it should eliminate the requirement for efforts documentation for part-time hires. Alternatively, the Commission inquired what level of consideration should be given for part-time hires consistent with

the Commission's primary EEO policy focus on full-time hires and employment. NOI ¶ 22.<sup>4</sup>

Tribune believes that the Commission should continue to focus its efforts on full-time hires and, accordingly, submits that there is no need to routinely collect information on part-time hires and employees. As noted above, the primary purpose of the Commission's EEO regulations is to encourage program diversity. Part-time employees normally do not have input into programming decisions. Hence, there is little justification for the Commission to regulate in that area and no need to collect information concerning part-time workers.

Moreover, requiring stations to report additional information concerning their part-time workforces would only increase the paperwork burden on licensees. That, in turn, would tend to discourage the use of part-time employees.

Broadcast stations typically hire part-time employees as last-minute substitutes for regular employees who are sick or otherwise absent or to perform a function for which the station

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<sup>4</sup> In addition, the Commission asked whether its Form 396 should be revised to request information only for full-time hires or whether it should ask that the information be divided by full-time and part-time hires. NOI at ¶ 28. The Commission also asked whether it should monitor efforts by broadcasters to promote part-time employees to full-time positions and whether the renewal application should be revised to include detailed recruitment and hiring information for every vacancy filled during the renewal year, including the full-time or part-time nature of the position. Id.

is not certain there is a long-term need. Employing a worker on a part-time basis also provides the station with an opportunity to observe that individual first-hand; on that basis, full-time positions sometimes are offered to part-timers. This may provide an opportunity to individuals (including women and minority group members) who do not, at least on paper, satisfy the station's educational or experience requirements, to demonstrate the capacity to fill a full-time position at the station. The Commission should not discourage part-time employment by imposing additional paperwork burdens on licensees.

#### **CONCLUSION**

The Commission should return to a more balanced approach in its EEO requirements and give actual hiring results at least as much emphasis as broadcaster efforts. In so doing, the Commission should encourage broadcaster innovation and should avoid imposing additional paperwork burdens on broadcasters (for example, with respect to part-time employees) that may well

impair station efforts to increase the number of minority and female employees.

Respectfully submitted,

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